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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,506	03/23/2004	Kevin Jump	JUM-101	3405

7590
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04/29/2005

EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/807,506	Applicant(s) JUMP, KEVIN	
	Examiner Jon A Szumny	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

This is the second office action for application number 10/807,506, Wall Hanging Adjustable Mount and Method, filed on March 23, 2004.

Election/Restrictions

Applicant's election of Invention I, claims 1-10 in the reply filed on April 7, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

Claims 11-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 7, 2005.

Priority

Domestic priority of application numbers 60/477,394 and 60/534,157, filed on June 11, 2003 and January 2, 2004, respectively, is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

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Claims 2-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "said engagement features" in line 2.

Claim 5 recites the limitation "said groove" in line 2.

There is insufficient antecedent basis for these limitations in the claims.

It is not even understood where the "groove" is located since claim 2 already recited that the engagement feature(s) comprises the "bottom of a peripheral annular space". Further, claim 7 recites that an "annular surface...defines the bottom of the groove". The difference between the "peripheral annular space," "groove," and "annular surface" is just not seen. Therefore, the Examiner will attempt to apply the art as best understood, but will not specify that any claims not rejected under art would be allowable if the rejection under 35 U.S.C. 112-2nd paragraph are overcome since it is not even completely clear what the applicant is intending to claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S Patent number 2,384,478 to Lapeyre.

Lapeyre '478 discloses an adjustable mounting comprising a generally round mounting element (figure 6) having a perimeter, a wall fastener (42) passing through a hole in the

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mounting element, a feature (43) located eccentrically with respect to the hole, the mounting element rotatable about the fastener whereby the fastener can inherently be loosened to vertically shift the feature, and wherein the mounting element can inherently be held against a wall surface to be nonrotatable upon tightening of the fastener against the mounting element, wherein the feature comprises the bottom of a peripheral annular space.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 2,384,478 to Lapeyre in view of U.S. Patent number 1,871,615 to Jones.

Regarding claim 3, Lapeyre '478 teaches the previous invention failing to specifically divulge the fastener to be threaded, but does teach that the fastener doesn't necessarily need to be a nail (page 2, column 2, line 8). Jones '615 reveals an adjustable mounting (figure 3) including a generally round mounting element, a feature and a threaded wall fastener (12) passing through a hole in the mounting element. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the fastener of Lapeyre '478 to be threaded as in Jones '615 since it is well known that where two known alternatives are interchangeable for their desired function, an express suggestion of the desirability of the substitution of one for the other is not needed to render such substitution obvious.

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With respect to claims 4-7, Lapeyre '478 further fails to specifically teach the annular space to be defined by two series of teeth arranged about the perimeter lying on either side of the mounting element. However, Jones '165 teaches an annular space to be defined by a series of outwardly flared teeth (13) arranged about the perimeter of the mounting element. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mounting element of Lapeyre '478 so as to have a series of teeth arranged about the perimeter and lying on one side of the mounting element to provide for a more stable mounting by preventing rotation of the mounting element while the mounting element is being secured in place. Additionally, it would have been obvious to have duplicated the parts and provided another series of teeth on the other side of the annular space so as to conveniently allow either side of the mounting element to be mounted against a wall or other surface. Finally, the teeth in each series would inherently be "offset" from each other (one tooth is on one side, one is on the other side, thus, they are offset from each other); wherein there is some "annular surface" extending between each of the series of teeth hence defining the bottom of a groove.

Regarding claim 10, Lapeyre '478 further fails to specifically teach a counterbore at each end of the hole. Nevertheless, Jones '615 teaches the previously described mounting element wherein the hole for the fastener includes a counterbore (11). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hole of Lapeyre '478 so as to include a counterbore in order to conveniently hide the head of the fastener while preventing damage to an object utilizing the mounting element. Further, it would have been obvious to have duplicated the parts and provided a counterbore on the other end of the hole so as to conveniently allow either side of the mounting element to be mounted against a wall or other surface.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pearson '731, Laystrom '259, Bell '669, Tendler '915, Schaefer '799, Morrill '639, Emmons '813, Slemmons '848, Warkentin '496 and Nelson '378 divulge various adjustable mounting devices

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (571) 272-6824. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.



Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
April 20, 2005